

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:08-CR-127-BO-1
No. 7:10-CV-205-BO

JOSE MENDOZA-MIGUEL,)	
)	
Petitioner,)	
v.)	O R D E R
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

This matter is before the Court on Petitioner's Motion to Amend [DE 141]. In his motion, Petitioner requests leave to file a reply to the government's response to Petitioner's § 2255 petition.


The Rules governing § 2255 proceedings expressly permit the action petitioner requests leave to perform. Specifically, Rule 5(d) of the Rules governing § 2255 Proceedings provides that a petitioner "may submit a reply to the respondent's answer or other pleading within a time fixed by the judge." In this Court's October 15, 2010 Order directing the government to respond to Petitioner's § 2255 motion, the Court did not fix a time for Petitioner's reply. Nor does it appear that any local rule governs the timing of a petitioner's reply in a § 2255 action. It is the opinion of the Court, however, that a Petitioner's reply in a § 2255 proceeding is timely if it is filed within 30 days from the date the government files its responsive motion or other pleading.

Here, on December 6, 2010, Petitioner filed a reply [DE 145] to the government's Motion to Dismiss [DE 143], which was filed on November 16, 2010. Petitioner's reply was filed within 30 days from the filing of the government's Motion to Dismiss. Accordingly, Petitioner's reply was timely filed and his request for leave of court is unnecessary.

Petitioner's Motion to Amend is, accordingly, DENIED as moot.

SO ORDERED.

This the 11 day of January, 2011.



TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE